

**CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF  
SUNNYVALE AND AMPHION ENVIRONMENTAL, INC. FOR DESIGN  
AND CONSTRUCTION SUPPORT SERVICES FOR THE SUNNYVALE  
DOWNTOWN PLAZA**

THIS AGREEMENT dated July 1, 2002 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), AND AMPHION ENVIRONMENTAL, INC. ("CONSULTANT"), a professional corporation with principal offices at 1404 Franklin, Suite 300, Oakland, California.

WHEREAS, CITY desires to secure professional services necessary for investigation, analysis, design, preparation of construction drawings and contract specifications, consultation, services during bidding and construction and other services for a project known as the Downtown Plaza; and

WHEREAS, CONSULTANT represents that it, and its sub-consultants, if any, possess the professional qualifications and expertise to provide the required services and are registered by the State of California to practice landscape architecture and/or engineering in the required disciplines;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONSULTANT agrees to assign Cheryl Miller to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONSULTANT.

Except as specified in this Agreement, CONSULTANT shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Notice to Proceed/Completion of Services

- (a) CONSULTANT shall commence services upon receipt of written Notice to Proceed from CITY. Notice shall be deemed to have occurred three (3) calendar days after deposit in the regular course of the United States mail.
- (b) When CITY determines that CONSULTANT has satisfactorily completed the services defined in Exhibit "A," CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has satisfactorily completed the Scope of Work (Exhibit "A"), and if so requested, CITY shall make this determination within fourteen (14) calendar days of such request.

3. Project Schedule

The Project Schedule is set forth in the attached Exhibit "D."

4. Payment of Fees and Expenses

Payments shall be made to CONSULTANT on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." Total Compensation for Basic Services shall be on a fixed-fee basis. All compensation will be based on monthly billings presented in a format similar to that set forth in Exhibit "B-1" and shall include an estimate of the percent of total completion associated with the various phases of basic services. Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. When applicable, copies of pertinent financial records shall be included with the submission of billing(s) for all direct reimbursables. Reimbursables shall be paid at cost. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of Four Hundred Eighty Three Thousand and 00/100 Dollars (\$483,000.00). Notwithstanding the foregoing, the Director of Public Works may, at the Director's sole discretion, authorize additional services to be performed under this agreement at additional compensation not to exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00.) Compensation for Additional Services shall be on a not-to-exceed hourly time and material basis, as agreed between the parties, and based on the billing rates as set forth in Exhibit "B-2".

5. No Assignment of Agreement

CONSULTANT binds themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONSULTANT from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONSULTANT's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONSULTANT from any liability under the terms of this Agreement. Consultant shall not sub-contract any portion of the work contemplated and provided for herein without prior written approval of CITY.

6. Consultant is an Independent Contractor

CONSULTANT is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONSULTANT in connection with this Agreement will be employees of CONSULTANT and not employees of CITY in any respect. CONSULTANT is responsible for obtaining statutory Workers' Compensation coverage for its employees.

7. Consultant's Services to be approved by a Registered Professional

All reports, costs estimates, plans and other documents which may be submitted or furnished by CONSULTANT shall be approved and signed by a qualified registered professional in the State of California. The title sheet for calculations, specifications and reports, and each sheet of plans, shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation.

8. Standard of Professional Care

CONSULTANT represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California and in the same locale as the Project.

The plans, designs, specifications, estimates, calculation reports and other documents furnished under the Scope of Work (Exhibit "A") shall be of a quality acceptable to CITY. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar projects.

9. Responsibility of CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the negligent performance of this Agreement and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY to the extent caused by Consultant's negligent performance of any of the services furnished under this Agreement.

Any acceptance by CITY of plans, specifications, calculations, construction contract documents, reports, diagrams, maps and other material prepared by CONSULTANT shall not, in any respect, absolve CONSULTANT for the responsibility CONSULTANT has in accordance with customary standards of good professional Landscape architectural and Engineering practice in compliance with applicable Federal, State, County and/or municipal laws, ordinances, regulations, rules and orders.

10. Right of CITY to Inspect Records of CONSULTANT

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years from the date of final payment to CONSULTANT or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT. CITY shall disallow any expenses not so recorded.

11. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

12. No Pledging of CITY's Credit

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

13. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof.

15. Hold Harmless/Indemnification

To the extent permitted by law, CONSULTANT agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property to the extent arising out of any negligent act, error, omission or negligence of CONSULTANT, its officers, employees, agents, contractors, subcontractors or any officer, agent or employee thereof in relation to

CONSULTANT's performance under this Agreement. Such defense and indemnification shall not apply in any instance of and to the extent caused by the sole negligence or willful misconduct of CITY, its officers, employees, agents or representatives.

16. Insurance Requirements

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "C."

17. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

18. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:                      Assistant Director of Public Works  
                                    Department of Public Works  
                                    CITY OF SUNNYVALE  
                                    P. O. Box 3707  
                                    Sunnyvale, CA 94088-3707

To CONSULTANT: Cheryl Miller  
                                    Amphion Environmental, Inc.  
                                    1404 Franklin, Suite 300  
                                    Oakland, California 94612-2504

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

19. Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

20. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

21. Integrated Agreement

This Agreement embodies the agreement between CITY and CONSULTANT and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

22. Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or officer of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would conflict in any manner or degree with the performance of this Agreement.

23. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

24. Records, Reports and Documentation

CONSULTANT shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONSULTANT shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONSULTANT agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONSULTANT's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

25. Termination of Agreement

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) calendar days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage

of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

26. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY, except that CITY hereby consents to those subconsultants listed in Exhibit "E". The Director of Public Works may authorize modification to the list of subconsultants.

27. Fair Employment

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

28. Changes

CITY or CONSULTANT may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONSULTANT, shall be incorporated in written amendments to this Agreement.

29. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

30. Severability Clause.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

31. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

32. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

33. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:  
CITY CLERK

CITY OF SUNNYVALE ("City")

Susan Kitchens  
City Clerk

By Robert A. LaFila  
City Manager

APPROVED AS TO FORM:

AMPHION ENVIRONMENTAL, INC.  
("CONSULTANT")

Joan A. Boyer  
City Attorney

By E. Byron McCulley  
E. BYRON M<sup>C</sup>COLLEY/PRESIDENT  
Name/Title

By Cheryl Miller  
Cheryl Miller / vice president  
Name/Title



## **EXHIBIT "A"**

### **SUNNYVALE DOWNTOWN PLAZA**

#### **SCOPE OF WORK**

Design of Plaza will include all elements of conceptual design prepared by Amphian Environmental and approved by Council on June 4, 2002 (Basic Design option). All elements and overall design, including the roof deck, shall meet the 1997 Uniform Building Code and all other latest applicable Codes. Design shall be coordinated with the previous design done by Nishikan Meninger, Inc., for concrete slab.

All utilities, including any new services required, shall be part of Consultant's scope of design and shall meet all applicable codes.

The perimeter sidewalk is under design by Kier & Wright Engineers. Consultant shall be responsible for independent coordination of sidewalk incorporation into the design. The consultant shall be responsible for integrating the project design within the parameters of the plaza waterproofing provided by others.

#### **1.0 PROJECT DESCRIPTION**

- 1.1** Location – The site is owned by the City of Sunnyvale at 200 West Evelyn Avenue. The site is currently a roof deck above an underground parking garage.
- 1.2** Project – New 1.6-acre public downtown plaza based on Conceptual Design approved by the City Council on June 4, 2002. The work includes landscaping, site furnishings, hardscape, lighting, seat walls, utilities connection, independent drainage, and plaza features including, but not limited to, water features, shade structures, artwork, and raised stage. In addition, the design work shall include Tier 1 Enhancements as Additive Alternates as approved by the City Council on June 4, 2002, including restrooms, feature lighting, concrete paving with granite bands, large trees, significant water feature, and a labyrinth.
- 1.3** Cost – Consultant shall design the project within a \$4,150,000 construction budget. In addition, consultant shall design Additive Alternates, which include Tier 1 Enhancements approved by the City Council on June 4, 2002, within a \$1,130,000 construction budget.

The work includes consulting services during the design, bidding, and construction phases of the project.

## **2.0 WORK TO BE PERFORMED**

The Consultant shall obtain all needed information, perform engineering analysis of new and existing roof deck and design, and prepare detailed construction plans and specifications that are suitable for bidding and construction purposes. The Consultant shall obtain all required permits. The Consultant's scope includes all related work needed to complete the design, including preparation of construction cost estimates, construction schedules, lists of equipment and material submittals, support during bidding, support during construction, and preparation of record drawings.

Throughout the design process, the Consultant shall maintain a close working relationship with City staff. Meetings with City staff shall be held at project kickoff and as needed. Monthly written progress reports are required. Consultant shall meet with City staff to review all comments following the City's review of intermediate and final versions of the design. The Consultant shall meet with any outside agencies, as necessary, based on project requirements.

The Consultant shall submit intermediate versions of the plans and specifications at approximately 30%, 60%, and 90% completion (note requirements of Section 6.0., Deliverables). The Consultant shall assist the City in obtaining approval from the City Building Department for any required building permit. The Consultant shall assist the City in obtaining approval from any outside agencies for any other required permits. This process may require multiple submittals. After City has obtained all permits from all agencies, a 100% submittal shall be made to the City in accordance with Section 6.0, Deliverables. The Consultant shall prepare engineer's estimates for the probable cost of construction. A formal presentation of the 60% Submittal shall be made by the Consultant.

A draft proposed design schedule is shown in Exhibit "D."

The Consultant is responsible for producing the project plans, technical specifications, and special provisions. The City will be responsible for final assembly and distribution of bid documents and the bid solicitation.

Consultant shall submit timely progress billings with sufficient detail to enable understanding and verification.

The Consultant's scope includes all related work needed to complete the design, such as landscape, structural, mechanical, and electrical designs/documentation.

- 2.1** Kick-off Meeting. Consultant shall prepare an agenda and a list of questions and data required to be used as a working tool for the meeting. The goals of the meeting will include: (1) review the scope of work, (2) establish lines of communication, (3) establish the project schedule and specific milestones, and (4) define design.
- 2.2** Detail Design. Consultant shall prepare a detailed work plan for the design phase work, including tasks, roles, responsibilities, milestones, deliverables, and schedule. Consultant shall maintain communication with the design project manager, subconsultants, and other involved persons and organizations by telephone, mail, fax, and electronic mail. Consultant's key tasks in the detail design phase shall be as follows:
  - 2.2.1** Gather necessary data and information
  - 2.2.2** Accomplish needed analysis and calculations.
  - 2.2.3** Through contact with utility companies and other involved public agencies, determine existing conditions, construction, and permit requirements.
  - 2.2.4** Research product information, cost information, materials, and constructability.
  - 2.2.5** Prepare technical specifications for all construction. Prepare special provisions to be incorporated into the City's Standard Contract Documents.
  - 2.2.6** Prepare detailed construction cost estimates and construction project schedules. Update the construction cost estimates and construction project schedules as necessary.
  - 2.2.7** Review project progress at the 30%, 60%, 90%, and 100% completion points.

- 2.2.8 Make a formal project presentation at the time of the 60% submittal.
  - 2.2.9 Prepare an Equipment Replacement Schedule with estimated replacement costs for the 90% Submittal and upgrade them for the 100% and Construction Submittals.
  - 2.2.10 Prepare a Schedule of Required Tests (list of tests required in the Technical Specifications) for the 90% Submittal and upgrade it for the 100% and Construction Submittals.
  - 2.2.11 Perform a Coordination and Constructability Review prior to the 90%, 100%, and Construction Submittals. Submit a summary of the comments from each of the Constructability Reviews with each of the submittals.
  - 2.2.12 Conduct and take/distribute action item record for all design phase meetings.
- 2.3 Services During Bidding. Consultant shall answer any technical questions related to the design during the bidding period, attend the pre-bid conference (if any), and provide technical input for addenda (if necessary) for distribution by the City. All communications with bidders shall be directed through the City.
- 2.4 Services During Construction. The City's Public Works staff will have primary responsibility for construction management and inspection. The Consultant's point of contact shall be the City, not the Contractor. The key tasks for the Consultant (and Subconsultants, if any) in this phase shall be as follows:
- 2.4.1 Attend meetings, including the pre-construction meeting.
  - 2.4.2 Review and comment on Schedule of Values and compare them with the Engineer's Estimate.
  - 2.4.3 Review and comment on Construction Schedules.
  - 2.4.4 Review and comment on all technical submittals (and resubmittals) and vendor data called for in the construction contract documents and all proposed substitutions for conformance to drawings and technical specifications.

- 2.4.5 Provide technical responses to Requests for Information (RFIs) through the City.
  - 2.4.6 Review and make recommendations for proposed changes to the contract (RFQ's/CCO's).
  - 2.4.7 Make site visits and observe construction, as necessary.
  - 2.4.8 Participate in the final site inspection and development of the punchlist.
  - 2.4.9 Provide technical input, in case of design error or omission, into difficult or disputed subjects that have not progressed to a formal claim situation.
- 2.5 Record Drawings. Prepare a set of final record drawings from marked up drawings generated by the Contractor or City or both.

### 3.0 REFERENCE DOCUMENTS

The City of Sunnyvale's Standard Specifications consist of the City of Sunnyvale 2000 Standard Specifications for Public Works Construction, 2000 edition and Standard Details for Public Works Construction, 2000 Edition, Department of Public Works, revised 7/00.

The following reference documents will be available to the Consultant:

1. The City of Sunnyvale 2000 Standard Specifications for Public Works Construction, 2000 edition and Standard Details for Public Works Construction, 2000 Edition, Department of Public Works, revised 7/00.
2. City of Sunnyvale Standard Contract Documents.
3. Electronic copy of City Standard Cover Sheet & Border CADD Files.

#### **4.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM**

The Consultant shall have an in-house Quality Assurance/Quality Control (QA/QC) Program in place to review the design throughout the project. In addition to the design review conducted by the Project Manager and the design team, there shall be separate design, coordination, and constructability reviews conducted by a Final Reviewer who is an experienced, qualified landscape architect not directly involved in the project and independent of the design team. This Final Reviewer may be an in-house or subconsultant employee. At a minimum, the following reviews should be included:

- 4.1** At each stage of the design, an in-house design, coordination, and constructability review shall be performed by the Project Manager, prior to submittal to the City.
- 4.2** Prior to each submittal, beginning with the 60% Submittal and ending with the Construction Submittal, the Final Reviewer shall perform an independent design, coordination, and constructability review.
- 4.3** The stage-by-stage design reviews by the Project Manager and the Final Reviewer shall be documented by initialing the drawings.
- 4.4** With the Construction Submittal, the Final Reviewer shall certify, on a form provided by the City, that each of the specified reviews have been performed and that all review comments have been appropriately addressed.

#### **5.0 CONSULTANT'S PROJECT TEAM**

The names of the project team members are shown on Exhibit "E."

#### **6.0 DELIVERABLES**

- 6.1** 30% Submittal
  - a) Plans (5 sets of prints; 24" x 36", max. size).
  - b) Outline of technical Specifications in CSI format (3 hard copies).
  - c) Preliminary construction cost estimate (3 copies).
  - d) Preliminary construction schedule (3 copies).
  - e) Cut sheets for equipment/appurtenances (3 copies).

**6.2 60% Submittal**

- a) Plans (5 sets of prints; 24" x 36", max. size).
- b) Technical Specifications in CSI format (3 hard copies).
- c) Special Provisions (3 hard copies).
- d) Updated construction cost estimate (3 copies).
- e) Updated construction schedule (3 copies).
- f) Written response to all comments from previous submittal.
- g) Formal 60% Submittal presentation (this is a comprehensive meeting).
- h) Additive Alternates (3 copies).

**6.3 90% Submittal**

- a) Plans (5 sets of prints; 24" x 36", max. size).
- b) Technical Specifications in CSI format (4 hard copies).
- c) Special Provisions (4 hard copies).
- d) Structural Calculations (1 hard copy).
- e) Updated construction cost estimate (3 copies).
- f) Updated construction schedule (3 copies).
- g) List of submittals and related specifications section (3 copies).
- h) Written response to all comments from previous submittal.
- i) Marked up copy of City's boilerplate, including complete Special Provisions related to the project (2 copies).
- j) Schedule of Required Tests (2 copies).

**6.4 Building Permit Submittal**  
*(This submittal may have to be repeated until permit is obtained)*

- a) Plans (6 sets of prints, including 3 sets wet-stamped and signed).
- b) Technical Specifications (2 hard copies).
- c) Structural Calculations (2 hard copies, wet-stamped and signed). Consultant is responsible for producing structural calculations that will ensure integrity of existing structure (roof deck) and all new elements above it.
- d) The City shall be responsible for the cost of required permits.

- 6.5** Permitting Agency Submittal
- a) As required by any other permitting agencies.
  - b) The City shall be responsible for the cost of required permits.
- 6.6** 100% Submittal (*Incorporating all previous corrections & comments by previous reviewers and other agencies with permitting responsibility*).
- a) Plans (5 sets of prints; 24" x 36", max. size).
  - b) Technical Specifications in CSI format (3 hard copies).
  - c) Special Provisions including attachments (3 hard copies).
  - d) Updated construction cost estimate (3 copies).
  - e) Updated construction schedule (3 copies).
  - f) Updated list of submittals required by Technical Specifications (1 copy).
  - g) Written responses to all City comments, including those from the Building Department and/or other permitting agencies (1 copy).
  - h) Updated Schedule of Required Tests (2 copies).
  - i) The City shall be responsible for the cost of required permits.
- 6.7** Construction Submittal
- a) CADD construction plans (1 electronic copy on disk).
  - b) Plans (1 stamped and signed reproducible copy and 4 sets of prints; 24" x 36", max.).
  - c) **Technical Specifications** (1 unbound hard copy and 1 electronic copy). Electronic copy shall be one document (file) only, in MS Word; it must include all sections and everything else that appears in the technical specifications (e.g. diagrams, attachments, etc.). Numbering system should be consistent all through the specifications. **Special Provisions** (1 unbound hard copy and 1 electronic copy). Font utilized for Technical Specifications and for Special Provisions should be Arial, size 10. Spelling should have been checked before final document is sent to City.



- d) Written responses to any comments generated from Submittals 6.5 and 6.6 above (1 copy).
  - e) Original (final) permit(s) obtained from any permitting agency involved in the project.
  - f) Provide QA/QC certification by Final Reviewer.
  - g) Updated Schedule of Submittals (2 copies).
  - h) Updated Schedule of Required Tests (2 copies).
- 6.8 Record Drawings**
- a) Revised reproducible plans based upon the Contractor's representation of actual construction (1 set; 24" x 36", max.).
  - b) CADD plans based upon the Contractor's representation of actual construction (1 electronic copy).

**Exhibit "B"**  
**COMPENSATION**

**Design Development**

Services shall be performed on  
a fixed fee basis.

**\$147,400**

**Construction Documents and Support During Bidding**

Services shall be performed on  
a fixed fee basis.

**\$274,400**

**Construction Support & Post-Construction Services**

Services shall be performed on a time  
and materials basis. Total amount for  
construction support and post-construction  
services shall not exceed

**\$61,200**

Total contract amount for services listed  
above not to exceed

**\$483,000**

**Additional Services**

Additional services may be performed on a  
time and materials basis if authorized in  
advance by the Director of Public Works.

Total contract amount for additional services,  
if required, not to exceed

**\$100,000**

**Exhibit "B"**  
**COMPENSATION**

**Invoicing and Payment**

Consultant shall submit invoices in a format similar to that set forth in Exhibit "B-1" no more frequently than monthly. Payment shall be made within thirty (30) days of receipt of an accurate, itemized invoice by the City's Department of Finance Accounts Payable Unit.

Design Development and Construction Documents and Support During Bidding - The amount invoiced shall correspond with the percent of each phase completed through the date of invoice.

Construction Support, Post-Construction Services and Additional Services Authorized by the Director of Public Works - Invoices shall itemize services performed during the preceding month, including for each person who performed services: name, a brief description of the services performed, the number of hours worked and the hourly rate. Invoices which include reimbursable expenses shall be accompanied by receipts supporting the reimbursement request.

# EXHIBIT B-1

*Amphion*

E. Byron McCulley, FASLA, Principal  
Cheryl Miller, RLA CA #23408, Principal

20-May-02

Attn: Erin Walters  
Community Development Dept.  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94088-3707

PURCHASE ORDER: 6184  
RE: SUNNYVALE DOWNTOWN PLAZA

## ELEVENTH BILLING

BILLING PERIOD: 16 APR thru 15 MAY 2002

Employee	Rate	Hours	Subtotal
E. Byron McCulley, Principal	115.00	22.0	\$2,530.00
Cheryl Miller, Project Manager	90.00	24.0	\$2,160.00
Scott Stohler, Project Designer	90.00	40.0	\$3,600.00
Lorin W. Culver, Professional	68.00	24.0	\$1,632.00
Barrett W. Olson, Professional	68.00	12.0	\$816.00
			<u>\$10,738.00</u>
Direct Expense			
Plotter			\$36.00
		Total Direct Expense:	<u>\$36.00</u>

TOTAL AMOUNT DUE: \$10,779.40

Labor Expense:		Current	Previously	Invoiced
Phase / Task	Phase Max % Comp	Invoice	Billed	To Date
1. Orientation/Background Mat'ls	10,140.00 100.00%	0.00	10,140.00	10,140.00
2. Technical Input/Parking Garage	1,640.00 14.02%	0.00	230.00	230.00
3. Design Opportunities/Refine	12,840.00 100.00%	0.00	12,840.00	12,840.00
4. Synthesis/Dev Alternat Concepts	21,314.00 100.00%	0.00	21,314.00	21,314.00
5. Preferred Alternative Plan	21,352.00 100.00%	3,153.00	18,199.00	21,352.00
6. Conceptual Design & Approvals	13,474.00 56.29%	7,585.00	0.00	7,585.00
Direct Costs	6,000.00 Actual	41.40	145.14	186.54
TOTAL MAXIMUM	86,760.00	10,779.40	62,868.14	73,647.54
Less Payments Received		0.00	46,837.54	46,837.54
TOTAL		<u>\$10,779.40</u>	<u>\$16,030.60</u>	<u>\$26,810.00</u>

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(510) 841-9888 • Fax (510) 841-9887 • E-Mail [info@amphion.net](mailto:info@amphion.net)

SAMPLE

## Exhibit "B-2"

### HOURLY RATES

E. Byron McCulley	Principal	\$120
Cheryl Miller	Project Manger	\$95
Scott Stohler	Project Designer	\$95
Lorin W. Culver	Professional	\$75
Barrett W. Olson	Professional	\$75
	Technical/ Computer Staff	\$55
	Para-Professional/ Clerical	\$45

## EXHIBIT "C"

### INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Consultant shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. ISO Occurrence Form CG 0001 is required.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. Workers' Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability Insurance appropriate to the Consultants Profession: \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

#### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers, except as follows: Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original Certificate of Insurance and endorsement(s) effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Ref: Consultant Service Agreement for Complex Projects (Can be used in other consultant projects.)  
Service Agreement Manual

City of Sunnyvale  
Risk & Insurance Management  
Policies/Consultants. Ins  
July 5, 2002

**EXHIBIT "D"**  
**DOWNTOWN PLAZA PROJECT SCHEUDLE**

Project Schedule starts at issuance of a written Notice to Proceed.

<b>Design Development (30% Submittal)</b>	<b>8 weeks</b>
<b>City Review and Approval</b>	<b>2 weeks</b>
<b>Construction Documents &amp; Specifications</b>	<b>16 weeks</b>
<b>City Review and Approval</b>	<b>3 weeks</b>
<b>Bidding Period</b>	<b>4 weeks</b>
<b>Award of Contract</b>	<b>8 weeks</b>
<b>Construction</b>	<b>52 weeks</b>



**EXHIBIT "E"**  
**LIST OF SUBCONSULTANTS**

<b>Consultant</b>	<b>Address</b>	<b>Telephone No.</b>
Structural Engineering <b>Nishkian Meninger Inc.</b>	1095 Folsom St, San Francisco, CA 94103	(415) 541-9477
Fountain Engineering <b>CMS Collaborative</b>	150 Felker St. Suite A Santa Cruz, CA 95060	(831) 425-3743
Civil Engineering <b>Kier &amp; Wright</b>	3350 Scott Blvd # 22, Santa Clara, CA 95054	(408) 727-6665
Electrical Engineering, <b>Harry Yee &amp; Associates</b>	1 <sup>st</sup> Interstate Bldg, Suite D 4920 Freeport Blvd	(916) 454 - 5319
Lighting Consultant <b>MSH Visual Planners</b>	3403 Piedmont Ave. Oakland, CA 94611	(510) 595 - 4360